

## **Remarks**

In the present response, nine claims (1, 3, 11-13, 15, 16, 25, 27) are amended; and two claims (2, 17) are canceled. Claims 1, 3-16, and 18-28 are presented for examination.

### **I. Summary of Amendments**

Claim 1 is amended to incorporate the limitations of dependent claim 2.

Claim 2 is canceled.

Claim 3 is placed in independent form with limitations from original claim 1.

Claim 11 is placed in independent form with limitations from original claim 1.

Claim 12 (noted as being allowable) is placed in independent form with limitations from original claim 1.

Claim 13 is amended to correct a typographical error. The amendment is not in response to any rejection.

Claim 15 is amended to incorporate the limitations of dependent claim 17.

Claim 16 is placed in independent form with limitations from original claim 15.

Claim 17 is canceled.

Claim 25 is placed in independent form with limitations from original claim 15.

Claim 27 is amended to correct a typographical error. The amendment is not in response to any rejection.

### **II. Claim Rejections: 35 USC § 103**

Claims 1, 4-10, 15, 19, 21-24 are rejected under 35 USC § 103 as being unpatentable over USPN 2002/0163910 (hereafter Wisner). This rejection is traversed.

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art cited must teach or suggest all the claim limitations. *See* M.P.E.P. § 2143. Applicants assert that the rejection does not satisfy these criteria.

The Office Action admits the following: "As per claim 2, Wisner fails to disclose providing an abort operation." (See OA, page 11). The limitations of claim 2 are incorporated into independent claim 1. For at least the reasons given in Section IV, claim 1 is now allowable.

The Office Action admits the following: "As per claim 17, Wisner fails to disclose providing an abort operation." (See OA, page 13). The limitations of claim 17 are incorporated into independent claim 15. For at least the reasons given in Section IV, claim 15 is now allowable.

A dependent claim inherits the limitations of the base claim. As such, the dependent claims of claims 1 and 15 are also allowable over Wisner.

### **III. Claim Rejections: 35 USC § 103**

Claims 20 is rejected under 35 USC § 103 as being unpatentable over Wisner in view of Hobbs, "Database Administration: Hot Standby for Rbd Systems" (hereafter Hobbs). This rejection is traversed.

Claim 20 depends from claim 15. Claim 15, as discussed in connection with Sections II and IV, is allowable over Wisner. Since Hobbs fails to cure the deficiencies of Wisner, claim 20 is allowable.

### **IV. Claim Rejections: 35 USC § 103**

Claims 2, 3, 11, 16, 17, 25 are rejected under 35 USC § 103 as being unpatentable over Wisner in view of USPN 6,442,552 (hereafter Frolund). This rejection is traversed.

Frolund has an issue date of August 27, 2002 and a filing date of June 30, 2000. The present application, however, has a filing date of July 9, 2001. While Frolund has a filing date before the filing date of the present application, the issue date of Frolund is after the filing date of the present application. As such, Frolund is classified as a 35 U.S.C. §102(e) reference.

The present U.S. Patent Application Serial No. 09/901,972 and Frolund were, at the time the invention of the present application was made, owned by Hewlett-Packard Company.

As Frolund only qualifies as prior art under 35 U.S.C. §102(e) and Frolund was used in an obviousness rejection under 35 U.S.C. §103(a) and common ownership of the present application and Frolund has been established, Applicants submit that under the prior art exclusion of 35 U.S.C. §103(c), Frolund does not qualify as a reference in an obviousness rejection under 35 U.S.C. §103(a) (*see* MPEP §706.02(l)(3); *see also* MPEP §706.07(a)). Applicants, therefore, respectfully request that the rejection of claims 3, 11, 16, 25 under 35 U.S.C. §103(a) be withdrawn and that claims 3, 11, 16, 25 be allowed.

Further, since the limitations of claim 2 are incorporated into claim 1, claim 1 is allowable. Also, since the limitations of claim 17 are incorporated into claim 15, claim 15 is allowable. Further yet, for at least the reasons given in this Section IV, all dependent claims from independent claims 1 and 15 are also allowable over the art of record.

#### **V. Claim Rejections: 35 USC § 103**

Claim 18 is rejected under 35 USC § 103(a) as being unpatentable over Wisner in view of Frolund and further in view of Oracle 8:SQL Reference, Release 8.0 (hereafter Oracle). This rejection is traversed.

As discussed in Section IV, Frolund is not a proper reference under 35 USC § 103(a). For at least this reason, Applicants respectfully request that the rejection of claim 18 be withdrawn.

#### **VI. Allowable Subject Matter**

Applicants sincerely thank the Examiner for allowing claims 12-14 and 26-28 subject to being rewritten in independent form including limitations of the base and intervening claims.

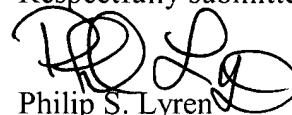
### CONCLUSION

In view of the above, Applicant believes claims 1, 3-16, and 18-28 are in condition for allowance. Allowance of these claims is respectfully requested.

Any inquiry regarding this Amendment and Response should be directed to Philip S. Lyren at Telephone No. (281) 514-8236, Facsimile No. (281) 514-8332. In addition, all correspondence should continue to be directed to the following address:

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Respectfully submitted,



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CERTIFICATE UNDER 37 C.F.R. 1.8: The undersigned hereby certifies that this paper or papers, as described herein, are being deposited in the United States Postal Service, as first class mail, in an envelope address to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 13th day of October, 2004.

By

Name: Be Henry

